

Letter of Findings Number: 08-0018P
Sales Tax
For the Tax Periods 2007

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ISSUES

I. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2\(b\)\(c\)](#).

The Taxpayer protests the imposition of the ten percent negligence penalty.

II. Tax Administration - Interest.

Authority: IC § 6-8.1-10-1(a)(e).

The Taxpayer protests the imposition of interest.

STATEMENT OF FACTS

The Taxpayer is an out of state partnership required to collect and remit Indiana sales tax. The Taxpayer remitted its sales taxes for the June 2007 period on July 31, 2007. Since the Taxpayer was on an early filer status, the Taxpayer's payment was late. The Indiana Department of Revenue (Department) assessed the negligence penalty and interest. The Taxpayer protested the assessments and submitted documentation supporting its protest.

I. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2\(b\)](#) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer argues that it was not negligent in remitting the subject sales tax because it did not know that it was on early filer status. In support of this contention, the Taxpayer stated that it had never received notification from the Department that it was on early filer status.

IC § 6-2.5-6-1(a) requires that each retail merchant responsible for collecting and remitting sales tax whose average monthly collection is \$1,000 or more must file the return and remit the sales taxes due on or before the twentieth of the next month. The Taxpayer has met this standard since 1999.

In the recent past, the Taxpayer has almost always remitted its sales tax by the 20th of the month in accordance with the early filer requirements. In fact the Taxpayer remitted the tax for the month preceding and the month following June 2007 in a timely fashion.

On the previous occasions when the Taxpayer remitted sales tax after the twentieth but before the end of the month, the Department assessed the negligence penalty. In each of these cases, the Taxpayer paid the penalty without protest. Each assessment of the negligence penalty was a notice to the Taxpayer that it had made a

mistake. At any of these times, the Taxpayer could have consulted the Department and determined the reason for the assessment of the negligence penalty. The Taxpayer failed to do so.

The Taxpayer had a duty to know the Indiana law. The Taxpayer also had a duty to inquire as to why it was receiving penalties on certain filings. The Taxpayer breached both of these duties. This constitutes negligence. The Department properly imposed the negligence penalty.

FINDING

The Taxpayer's protest to the imposition of the negligence penalty is denied.

II. Tax Administration - Interest.

DISCUSSION

Pursuant to the provisions of IC § 6-8.1-10-1(a), the Department imposed interest on the assessment of negligence penalty. The Taxpayer protests the imposition of interest. The Department does not have the authority to waive the imposition of interest. IC § 6-8.1-10- 1(e).

FINDING

The Taxpayer's protest is respectfully denied.

CONCLUSION

Both of the Taxpayer's protests are denied.

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